Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Regional Transportation Committee

Thursday, May 12, 2005
9:30 AM
Commission Chamber

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Commission Auditor

111 NW First Street, Suite 250
Miami, Florida 33128
305-375-4354

Regional Transportation Committee

May 12, 2005

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LEGISLATIVE ANALYSIS

FIRST AMENDMENT TO DEVELOPMENT LEASE AGREEMENT WITH AIR SAL, INC AT KENDALL-TAMIAMI EXECUTIVE AIRPORT

Aviation Department

I. SUMMARY

This resolution being recommended for approval by the BCC is the First Amendment to the Development Lease Agreement with Air Sal, Inc. This amendment addresses a concern of consistency within the Change of Ownership clause in their lease agreement.

II. PRESENT SITUATION

- In 1998, the BCC passed Resolution 949-98 approving a 25-year Development Lease Agreement (No. T-131) between Miami-Dade County and Air Sal, Inc for four (4) T-hangers.
- SECTION 9.03 (Change of Ownership) of the Development Lease Agreement requires the lease agreement to automatically terminate upon Air Sal's successful transfer of ownership or control, irrespective of County approval.
- Air Sal, Inc. is currently the only tenant on the north side of the airport that has developed aeronautical use buildings.
- Subsequent to Air Sal's lease agreement, Falcon Trust Air and Tamiami Air both agreed to lease agreements with the Aviation Department allowing them to develop T-hangers on the south side of the airport.
- Both Falcon Trust Air and Tamiami Air's lease agreements contain language allowing them to sell their business prior to County approval of the purchaser(s).

III. POLICY IMPLICATIONS

- The Aviation Department has recommended that we amend the lease agreement we currently have with Air Sal, Inc. to provide consistent, nondiscriminatory treatment among all similarly situated tenants.
- The department has expressed that Air Sal has been a tenant of the Tamiami Executive Airport for some time and they are not aware of Air Sal's desire to sell.

IV. ECONOMIC IMPACT

N/A

V. COMMENTS

- In the past, tenants at the Tamiami Executive Airport have expressed being slighted of maintenance services and other resources.

AIRNAV.COM

Airports | Navaids | Airspace Fixes | Aviation Fuel

Air Sal

at Kendall-Tamiami Executive Airport

Services

- Aviation fuel
- Aircraft parking (ramp or tiedown)
- Hangars
- Hangar lease/sales
- GPU / Power cart
- Passenger terminal and lounge
- Aircraft maintenance
- Aircraft cleaning / washing / detailing
- Aircraft parts
- Catering
- ...

Aviation fuel services

Brand: Chevron
Fueling hours: 24 hours a day

Fuel prices as last reported on 14-Apr-2005

100LL Avgas Self service	$3.20
Jet A Self service	$3.10

Discounts: $0.25 per gal (100LL) for T-Hangar tenants
Prices include all taxes. Prices not guaranteed.

UPDATE PRICES

Contact information

Address: 14005 SW 127th St
Miami, FL 33186
United States of America
Telephone: (305) 251-1982
Fax: (305) 251-1966
Email: airsal@bellsouth.net

Comments from AirNav users

Comments are submitted by their authors and do not reflect the opinion of AirNav, LLC. All comments must adhere to AirNav's Policy on Comments.
AirNav's standard comment retention period is 3 years.

From Dean Maheras on 25-Feb-2005
Fuel depot right there as you taxi in. Definitely a great place to stop to fuel you and your plane.

From Dr. Vaughn DeCoster on 16-Jan-2005
No one was around when I arrived, almost went to one of the other FBOs. Not open on weekends either. It's like a self-serve FBO, but the fuel was $2.68 (self-serve) in Miami! However, tie-down

RTC ITEM 3(C)
May 12, 2005

LEGISLATIVE ANALYSIS

RESOLUTION APPROVING THE ASSIGNMENT OF INTERAMERICAN CAR RENTAL COMPANY, INC MEMORANDUM OF UNDERSTANDING (MOU) TO GLOBAL RENT-A-CAR COMPANY, INC (GLOBAL).

Aviation Department

I. SUMMARY

This resolution approves the assignment of InterAmerican Car Rental Company, Inc.'s Memorandum of Understanding (MOU) for the Rental Car Facility (RCF) to Global Rent-A-Car Company, Inc.

II. PRESENT SITUATION

- In 2004, Global approached the Aviation Department (MDAD) and expressed their interest in the future RCF. The deadlines for the RCF lapsed in 2001. Alternative methods were provided to Global to allow them the opportunity to participate in the RCF.

- On February 25, 2005, InterAmerican Car Rental, Inc. and Global Rent-A-Car agreed to an assignment for the Memorandum of Understanding RCF position.

- MDAD, Global, and the other current companies participating in the RCF have discussed Global's assignment and the opportunity to participate in InterAmerican's position.

- After a number conference calls and meetings by the participating parties a collective consensus has been made to allow Global the opportunity to participate in the RCF.

III. POLICY IMPLICATIONS

- This resolution approves and validates the assignment between InterAmerican and Global for the RCF Memorandum of Understanding position.

IV. ECONOMIC IMPACT

- Global has applied for certification as a Local Small Car Rental (LSCR).

- Global's LSCR certification is currently pending and they will be required to pay 9% opportunity fees (rather than the 4.5%) until their LSCR certification has been granted.

V. COMMENTS

RTC ITEM 3(H)
May 12, 2005

LEGISLATIVE ANALYSIS

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN THE AMOUNT OF $100,000 BETWEEN MIAMI-DADE COUNTY AND GREAT AMERICAN INSURANCE COMPANY FOR CLAIMS RELATED TO GREAT AMERICAN'S INSURED, HEARD COMMUNICATIONS, INC., D/B/A GATEWAY OUTDOOR ADVERTISING, FOR OUTSTANDING PAYMENTS TO MIAMI-DADE TRANSIT UNDER CONTRACT NO. TA92-OMT

Miami-Dade Transit Agency

I. SUMMARY

This item seeks approval of a settlement with Great American Insurance Company (Great American) for $100,000.

Great American provided insurance for Heard Communications, Inc. d/b/a **Gateway Outdoor Advertising (Gateway)** in conjunction with Gateway's contract (No. TA92-OMT), with the County, for advertising rights on Miami-Dade Transit Buses, as well as at Metrorail Stations.

II. PRESENT SITUATION

In December 1991, the Board of County Commissioners approved contract TA92-OMT with Gateway Outdoor Advertising, Inc., allowing Gateway to sell and provide advertising on MDT Buses and at Metrorail Stations. The initial term of the contract was for 5 years through 1997. However, through options to renew and extensions, Gateway's contract was extended through 2001.

The contract called for Gateway to pay Miami-Dade County a Minimum Annual Guarantee (MAG) or 60% of the Gross Annual Revenues, whichever is greater.

The MAG for the year 2000 was $1,949,571 (or $155, 338 per month).

In April 2001, billing irregularities, late payments, and repeated failures by Gateway to meet the MAG resulted in an audit (No. A16702) by the County's Department of Audit & Management Services.

The audit revealed that Gateway had destroyed billing records and failed to comply with the County's request to review other records.

In early 2002, Gateway filed for Chapter 11 bankruptcy. At the time, it was estimated that Gateway still owed the County $1,154,884.

***SEE ATTACHMENT 1**

III. POLICY CHANGE AND IMPLICATION

This settlement would release Great American from any further obligation as it relates to their representation of Gateway and Gateway's on-going litigation with Miami-Dade County.

IV. ECONOMIC IMPACT

The County would receive $100,000 within 20 days, once the settlement agreement is executed and approved.

However, the County lost an estimated $1.1 million in revenues as a result of Gateway's failure to live up to the terms of this contract.

V. COMMENTS AND QUESTIONS

- ***What was Great American's Policy Limit for it's coverage of Gateway?***
- ***If the policy limit was only $100,000, why did the County not require more coverage, given that $100,000 did not even cover one (1) month of Gateway's proposed minimum guarantee?***
- ***Wouldn't this settlement prejudice the County's position as it relates to the law suit against Gateway?***
- ***If the County shows it is willing to accept pennies on the dollar, will Gateway be willing to accept a settlement that calls for more?***
- ***Was there a performance bond associated with this contract?***

ATTACHMENT1

MEMORANDUM

TO: Danny Alvarez, Director
Miami-Dade Transit Agency

DATE: June 26, 2001

FROM: Cathy Jackson, Director
Audit and Management Services Department

SUBJECT: Audit Report – Heard Communications, Inc. d/b/a Gateway Outdoor Advertising

PURPOSE AND SCOPE

As requested, we conducted an audit of Heard Communications, Inc. d/b/a Gateway Outdoor Advertising (Gateway) for the three fiscal years ended September 30, 2000 to ascertain propriety of fees paid to Miami-Dade Transit Agency (MDTA) and assess the reasonableness of revenue projections presented in its September 2000 bid proposal. We also verified compliance with the MDTA Advertising Agreement dated December 23, 1991 for vehicles and Metrorail passenger stations.

The scope of our audit was limited by Gateway's noncompliance with Article 5, Section 5.05 - Reports of the Agreement, requiring customary accounting records be maintained, including balance sheets, profit and loss statements in conformity with generally-accepted accounting principles, during the term of the Agreement and for a minimum of three years after termination. Citing that cash receipts journals were destroyed after Gateway's annual external audit, we were unable to verify the accuracy of net revenues reported to the County during the audit period.

BACKGROUND

In 1991, the Board of County Commissioners (BCC) approved a five-year contract with Gateway to sell advertising space on MDTA vehicles and Metrorail passenger stations. Two additional two-year renewal options were approved extending the Agreement through December 31, 2000. Under the Agreement, the County received monthly the greater of a prorated annual minimum guarantee amount of $1.75, $1.81 and $1.95 million for fiscal years 1998 through 2000, respectively, or 60% of net revenue. Amounts paid to the County for fiscal years 1998 through 2000 were $1.70, $1.12 and $1.49 million, respectively. Commencing January 2001, Gateway was granted a one-year extension, including a 90-day termination clause to allow completion of the competitive bid selection process, with the understanding that the annual minimum guarantee would be increased to $1.98 million or $165,000 monthly.

In response to the Request for Proposal (RFP) dated July 21, 2000, conforming bids were accepted on September 22, 2000 from Gateway and Transportation Displays, Inc. (TDI). A bid submitted by Obie Media Corporation (Obie) was rejected due to non-compliance with County Disadvantaged Business Enterprise (DBE) certification requirements. The Selection Committee recommended that Gateway be awarded the new five-year contract based on technical and pricing aspects of its proposal.

SUMMARY RESULTS

Percentage Fee Payments

Notwithstanding scope limitations discussed earlier, our audit disclosed Gateway currently owes the County $744,387 in delinquent revenues (Table I).

Table I

	Amount
Minimum Guarantee – March through June 2001	$659,359
Interest Charges	28,889
Unpaid Fee Remittance Due - October and November 1998	56,139
Total Delinquent Revenues	$744,387

The Agreement requires Gateway to remit the annual minimum guaranteed amount in equal payments on the 1st day of each month and excess percentage revenues by the 20th of the following month. However our analysis disclosed payments were delinquent an average 61, 180 and 48 days, respectively, during each of the three years ended December 31, 2000. This notwithstanding, MDTA did not begin assessing the 18% interest penalty until April 2000, and since that time $49,376 has been assessed, of which $28,889 is outstanding.

Further, from January 1999 through August 1999 Gateway remitted only $100,000 instead of the $150,755 fee payments owed. Additionally, Gateway acknowledges it owes the County $56,139 for revenues earned in excess of the minimum guarantee for October and November 1998.

Bid Revenue Projections

Projected revenues submitted by Gateway in its September 2000 proposal guarantees the County $20 million over the five years, which is almost triple the $7 million remitted for the previous comparable period (Table II).

Table II

Previous Contract		Proposed Minimum Guarantee			
Year	Actual Payments	Contract Year	Gateway	Obie	TDI
1996	$ 1,279,657	1	$ 2,500,000	$ 1,857,000	$ 2,100,000
1997	1,544,600	2	3,000,000	2,520,000	2,250,000
1998	1,754,060	3	4,000,000	3,410,000	2,500,000
1999	1,117,758	4	5,000,000	4,100,000	2,600,000
2000	1,493,445	5	6,000,000	4,559,000	2,700,000
	7,189,520		20,500,000	16,446,000	12,150,000
2001	1,978,076				
	$ 9,167,596		$ 20,500,000	$ 16,446,000	$ 12,150,000

During the prior five-year contract period, Gateway remittances rarely exceeded the minimum guarantee. Gateway increased published rates 45% in 2001, however, based on monthly remittances to the County, the minimum annual threshold again will not be exceeded. This contradicts Gateway's projections submitted in September 2000, which assumes a 67% increase in the County's return (Table II) in the first year of the proposed contract (2001). Subsequent years reflect a 20%, 33%, 25% and 20% increase over each previous year's revenue. Except for disclosing that rates were increased 10% annually, Gateway would not divulge the methodology used in deriving its projections. Nonetheless, assuming significant sales volume growth, a 70% occupancy, comparable annual rate increases of 10%, a 30% discount rate and moderate fleet growth, the projections appear achievable.

As previously mentioned, Gateway did not make complete records available supporting reported revenues and thus, we were unable to determine propriety of revenues. Gateway's claim that it destroyed supporting records is not only a violation of contract terms, but conflicts with Internal Revenue Service regulations, which require such records be maintained for three years. Before MDTA management proceeds with contract negotiations, Gateway should bring payments current and be directed to make financial records available for further inspection.[1] Moreover, Administrative Order 3-29 prohibits awarding contracts to contractors in arrears until all monies owed are paid in full or the County has agreed with an approved payment plan.

Although Gateway plans to secure long-term financing to satisfy outstanding obligations, prior delinquent payment history raises doubts about its ability to meet proposed minimum annual revenue projections. To reduce the County's exposure, the Department should require a cash performance bond equivalent to the proposed annual minimum guarantee and strictly enforce assessment of penalties for late payments.

We would like to express our appreciation for the courtesies and assistance extended to our staff during the audit process. Please provide a written response within 30 days in accordance with Administrative Order 3-7. If you have any questions or need additional information, please contact Maria L. Reyes, Audit Manager, at 305-349-6128.

CJ:rmb

c: Tom David, Executive Assitant to County Manager
Steve Spratt, Senior Assistant to County Manager
Eric McAndrew, BCC Chief Legislative Analyst

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[1]According to MDTA representatives, Gateway remitted two payments aggregating \$329,680 on June 25th and June 26th, reducing the amount outstanding to \$414,707.